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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2010-310

13 **LESLIE ANNE FITZGERALD**
744 W. Escalon
14 Fresno, California 93704

A C C U S A T I O N

15 Registered Nurse License No. 295942

16 Respondent.

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18 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the Interim
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 2. On or about August 31, 1978, the Board issued Registered Nurse License
24 Number 295942 to Leslie Anne Fitzgerald ("Respondent"). The license will expire on
25 October 31, 2011, unless renewed.

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1 6. Code section 2762 states:

2 In addition to other acts constituting unprofessional conduct within the
3 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
4 for a person licensed under this chapter to do the following:

5 (b) Use any controlled substance as defined in Division 10 (commencing
6 with Section 11000) of the Health and Safety Code, or any dangerous drug or
7 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
8 or in a manner dangerous or injurious to himself or herself, any other person, or
9 the public or to the extent that such use impairs his or her ability to conduct with
10 safety to the public the practice authorized by his or her license.

11 (c) Be convicted of a criminal offense involving the prescription,
12 consumption, or self-administration of any of the substances described in
13 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
14 record pertaining to, the substances described in subdivision (a) of this section, in
15 which event the record of the conviction is conclusive evidence thereof.

16 **COST RECOVERY**

17 7. Code section 125.3 provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licensee found to have committed a violation or violations
19 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Out of State Discipline)**

23 8. Respondent is subject to discipline under Code section 2761(a)(4), in that on or
24 about May 22, 2007, in a case entitled *Before the Indiana State Board of Nursing Case Number:*
25 *2007 NB 0017, State of Indiana v. Leslie Anne Fitzgerald, R.N., License Number: 28081900A,*
26 the Indiana State Board of Nursing entered an Order, attached hereto as **Exhibit A**, wherein
27 Respondent's practical nursing license was placed on indefinite suspension for failing to comply
28 with terms and conditions of a Recovery Monitoring Agreement ("RMA"). Respondent entered
into a five (5) year RMA in or about June 2005, as a result being diagnosed with alcohol
dependency. Respondent violated the following terms and conditions of the RMA:

- 29 a. Respondent relapsed on three occasions.
- 30 b. There were eleven diluted urine drug screens.
- 31 c. Respondent tested positive for alcohol on five occasions.

- 1 d. Respondent missed six urine drug screens between July and December 2006.
- 2 e. Respondent stopped calling in to receive her "color" in the urine drug screen system as
- 3 of December 6, 2006.
- 4 f. Respondent failed to notify the Indiana State Nurses Assistance Program¹ ("ISNAP")
- 5 that she had left her employment.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Conviction of a Crime)**

8 9. Respondent is subject to discipline under Code section 2761(f), in that on or about

9 July 13, 2004, in the case of *People v. Leslie A. Fitzgerald*, (Super. Ct. Santa Barbara County,

10 Case No. 1150226), Respondent was convicted by the Court on her plea of guilty of violating

11 Vehicle Code section 23153(b) (driving with a blood alcohol level of .08% or higher), a crime

12 that is substantially related to the qualifications, functions or duties of a licensed registered nurse.

13 The circumstances of the crime was that on or about July 9, 2004, Respondent, while having a

14 .08% or more, by weight, of alcohol in her blood, drove a vehicle.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 10. Respondent is subject to discipline under Code sections 2761(a), on the grounds

18 of unprofessional conduct, as defined in Code section 2762(b), in that on or about July 9, 2004,

19 Respondent used an alcoholic beverage to an extent or in a manner dangerous or injurious to

20 herself and the public when she operated a vehicle with her ability impaired.

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26 1. Respondent began participating in the ISNAP in June 2002, resulting from a referral by

27 Dr. Kelly who assessed Respondent while she was being treated for depression and anxiety.

28 Respondent's ISNAP file was closed on January 24, 2007, due to her failure to comply with the RMA.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Conviction Involving the Consumption of Controlled Substances and Alcohol)**

3 11. Respondent is subject to discipline under Code section 2761(a), on the grounds of
4 unprofessional conduct as defined in Code section 2762(c), in that on or about
5 July 13, 2004, Respondent was convicted of a crime involving the consumption of alcohol, as
6 more particularly set forth above in paragraph 9.

7 **PRAYER**

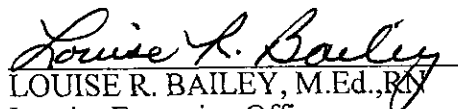
8 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number 295942, issued to
11 Leslie Anne Fitzgerald;

12 2. Ordering Leslie Anne Fitzgerald to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
14 125.3; and,

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: 12/28/09

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18 LOUISE R. BAILEY, M.Ed., RN
19 Interim Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

24 SA2009311468

25 Accusation (kdg) 9/20/09

EXHIBIT A

**Indiana State Board of Nursing's
Findings of Fact, Conclusions of Law, and Order**

BEFORE THE INDIANA STATE
BOARD OF NURSING
CAUSE NUMBER: 2007 NB 0017

STATE OF INDIANA,

Petitioner,

v.

LESLIE ANNE FITZGERALD, R.N.
LICENSE NUMBER: 28081900A,

Respondent.



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Indiana State Board of Nursing ("Board") held a default hearing on May 16, 2007 in the Auditorium of the Conference Center in the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, 46204 concerning the Complaint filed against Leslie Anne Fitzgerald, R.N. ("Respondent") on or about March 1, 2007.

The State of Indiana was represented by Elizabeth E. Kiefner, Deputy Attorney General. The Respondent failed to appear in person or by counsel.

The Board, after considering the evidence presented and taking official notice of its file in this matter, by a vote of 5-0-0, found the Respondent to be in default. The Board then held further proceedings in Respondent's absence, and, by a vote of 5-0-0, issues the following Findings of Fact and Order:

FINDINGS OF FACT

1. The Board has jurisdiction to decide this matter, conduct a hearing, and impose discipline upon Respondent's practical nursing license in accordance with Ind.

Code § 25-1 *et seq.* and Ind. Code § 25-26-13. Respondent was provided adequate notice of the hearing in accordance with Ind. Code § 4-21.5-3-8 and Ind. Code § 4-21.5-3-20.

2. On or around March 2, 2007, the Indiana Professional Licensing Agency sent a notice to Respondent at her last reported address at 4210 Oil Creek Drive, Indianapolis, Indiana, 46268 informing Respondent of the date, time, and place of the final hearing scheduled for April 19, 2007.

3. Pursuant to Ind. Code § 4-21.5-3-20, Respondent was provided adequate notice of the final hearing and failed to appear for the scheduled hearing on April 19, 2007.

4. The Board issued a Notice of Proposed Default on April 19, 2007.

5. Respondent is a licensed registered nurse in the State of Indiana holding license number 28081900A. Respondent's address on file with the Indiana Professional Licensing Agency is 4210 Oil Creek Drive, Indianapolis, Indiana, 46268.

6. Respondent began participating in the Indiana State Nurses Assistance Program ("ISNAP") in June 2002. Respondent was initially referred to ISNAP through Dr. Timothy Kelly who assessed her while she was being treated at Community Hospital for depression and anxiety. The Respondent was subsequently diagnosed with alcohol dependency and signed a five (5) year Recovery Monitoring Agreement ("RMA") through June 25, 2007.

7. From 2002 until her ISNAP file was closed out on January 24, 2007, the Respondent had been in significant non-compliance with her RMA including at least three (3) admitted relapses, eleven (11) dilute urine drug screens, and five (5) urine drug screens which were positive for alcohol. Respondent missed at least six (6) urine drug

screens from July to December 2006 and stopped calling in altogether to receive her "color" in the urine drug screen system as of December 6, 2006.

8. On or about January 22, 2007, ISNAP contacted Respondent's work site monitor, Chris Harner, who indicated that the Respondent quit work several weeks prior to the call. The Respondent failed to notify ISNAP that she had left her job.

9. Respondent's license was placed on emergency suspension by the Board at its February 15, 2007 meeting. The summary suspension was renewed when the notice of proposed default was issued at the April 19, 2007 Board meeting.

ULTIMATE FINDING OF FACT

1. Respondent's failure to comply with the above referenced standards is cause for disciplinary sanctions which could include a fine in the amount of \$1000.00, probation, suspension, or a revocation of license as detailed in Ind. Code § 25-1-9-9 and Ind. Code § 25-23-1-7.

CONCLUSIONS OF LAW

1. The Respondent's conduct as described above constitutes a violation of Indiana Code §25-1-9-4(a)(4)(D) in that the Respondent has continued to practice although unfit to practice due to addiction to, abuse of, or severe dependency upon alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely.

ORDER

Based upon the Findings of Fact, the Board issues the following Order:

1. Respondent's practical nursing license is hereby placed on **INDEFINITE SUSPENSION**. She may not petition for reinstatement for a minimum of one (1) year from the date of this final order.

2. Respondent shall not petition to reinstate her nursing license until the following conditions are met:

A Respondent shall contact the Indiana State Nurses Assistance Program and enroll in a Recovery Monitoring Agreement if she is eligible. Respondent must demonstrate three (3) months of **full compliance** prior to petitioning for her suspension to be lifted.

B. Respondent shall pay a **fine of two hundred fifty dollars (\$250.00)** to the Indiana Professional Licensing Agency.

IT IS FURTHER ORDERED, that Respondent shall immediately surrender all indicia of licensure, including her pocket license and wall license, to the Board in care of the Indiana Professional Licensing Agency, 402 West Washington Street, Room W072, Indianapolis, Indiana, 46204.

SO ORDERED, this 22 day of May 2007.

INDIANA STATE BOARD OF NURSING

By: 

Frances L. Kelly
Executive Director
Indiana Professional Licensing Agency